IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

Writ Petition No. 721 (S/S) of 2004

1. Sri Ashok Kumar Jain S/o Sri Jagdish Prasad Jain
   R/o 28, Shiva Enclave Mohit Nagar, Dehradun
2. Sri Laxman Prasad Sharma S/o Late Ram Murti Sharma
   R/o Vishwakarma Colony Bhandari Bagh, Block No. 1 Gali. No. 4, District Dehradun.

------Petitioners

Versus

1. Director Lekha/Haqdari Govt. of Uttaranchal, 23 Laxman Road, Dehradun.
2. Director of Treasury and Finance Services, Govt. of Uttaranchal, 23 Laxman Road Dehradun
3. Government of Uttaranchal through Principal Secretary of Finance Dehradun Secretariat Dehradun.

------Respondents

Hon'ble M.M. Ghildiyal, J.

Heard Sri S.N, Babulkar, learned Senior Counsel assisted by Sri Tumul Nailwal, Advocate for the petitioner and Sri H.M. Raturi, learned Standing Counsel State of Uttarakhand for the respondents.

By means of this writ petition, the petitioner has prayed for the following reliefs:

a. Issue a writ, rule, order or direction in the nature of mandamus commanding and directing the respondents not to give effect to the final seniority list dated 15.03.2002 (Annexure 4) so long as the representation of the petitioners are decided.

b. Issue a writ, rule, order or directions in the nature of mandamus commanding and directing the respondents to determine the seniority of the petitioners in accordance with

Rules and to restore them in the seniority list at appropriate places and then only consider promotions on the post of Assistant Accounts Officers.

bb. Issue a writ, order or direction in the nature of certiorari calling for the records and quashing the promotion list dated 27th July, 2004 issued by respondent no.1 as Annexure no. 8 to the writ petition.

c. Issue any other order or direction, which this Hon'ble Court may deem fit and proper under the circumstances of the case.

d. Award cost of the petition in favour of the petitioners.

This Court while entertaining the writ petition on 05.07.2004 granted time to the Standing Counsel, State of Uttarakhand to file counter affidavit and further the respondents were directed to decide the representation of the petitioners dated 27th March, 2002 by speaking order. During the pendency of the writ petition, the respondents promoted a number of Accountants/ Senior Auditors on the post of Assistant Account Officer vide order dated 27.07.2004. The petitioners moved amendment application challenging the order dated 27.07.2004 by which a number of Accounts/Senior Auditor have been promoted on the post of Assistant Account Officer ignoring the claims of the petitioners.

Brief facts of the case are that petitioner no. 1 and 2 were appointed as Assistant Accountant in the respondent department on 13.02.1975 and 17.10.1980 respectively. Subsequently, they were promoted as Accountant/Senior Auditor w.e.f. 01.01.1986 and were confirmed on the post of Accountant w.e.f. 08.05.1996. Prior to enforcement of Uttaranchal Sahayak Lekha Adhikari Seva Niyamavali, 2003, the services of Assistant Account Officer were

governed by the Rule known as Uttar Pradesh Shayak Lekha Adhikari Seva Niyamavali, 1985 as amendment in 2000.The Government of Uttaranchal for the purposes of considering promotion on the post of Assistant Account Officer issued a combined tentative seniority list of the Accountants/ Senior Auditor on 24.12.2001 and objections were invited from the aggrieved persons against the said list. In the said list, the petitioner no. 1 was placed at serial no. 9 and petitioner no. 2 was placed at serial no. 7. Since the petitioner no.2 was placed rightly in the aforesaid list, he did not make any objection, however, petitioner no.1 filed objection against the tentative list as persons junior to him were placed above to the petitioner in the aforesaid tentative seniority list.

Contention of the learned counsel for the petitioners is that without considering the objections of petitioner no. 1, final seniority list was published on 15th March, 2002 and the petitioner nos.1 and 2 were placed at serial no. 40 and 42 respectively in the final seniority list. Again petitioners raised objection by making a representation on 27.03.2002 against the final seniority list, however, no action was taken by the respondents and the petitioners were constrained to file present writ petition with a prayer for a direction to respondents not to give effect to the final seniority list dated 15th March, 2002 and further request was also made to determine the seniority of the petitioners in accordance with the Rules by placing them at the appropriate place in the seniority list. Learned counsel for the petitioner has further submitted that though there was order of this Court on 05.07.2004 to decide the representation of petitioners by a speaking order, the respondents promoted a number of persons on the post of Assistant Account Officer ignoring the claims of the petitioners. The

said promotion order was also challenged by the petitioners by way of amendment application.

Counter and supplementary counter affidavit have been filed by the State Government on 10th August, 2004 and 17th August, 2004. Both the affidavits have been sworn by one Sri Pankaj Srivastava, Assistant Accountant Officer, Accounts and Entitlement Camps Office, Haldwani on behalf of Director Lekha/ Haqdari, Government of Uttaranchal, 23 Laxmi Road, Dehradun. In para 4 of the counter affidavit, it is stated by the respondents that the representation/ objection made by the petitioners as well as other employees were decided by the Director of Treasury and Finance Services, Government of Uttaranchal on 13th March, 2002. In para 7 of the counter affidavit, it is stated by the respondent no.1 that the tentative seniority list, which was issued on 24th December, 2001 was prepared by the respondent no. 2 in accordance with the Uttar Pradesh Sahayak Lekha Adhikari Seva Niyqmavali, 1985, Uttar Pradesh Sahayak Lekha Adhikari Seva (Pratham Sansodhan), Niyamavali, 2000, whereas the State of Uttaranchal has prepared its own service Rules known as Uttaranchal Sahayak Lekha Adhikari Seva Niyamavali, 2003, which came into force w.e.f. 27.03.2003 and the promotions now to be made in accordance with Uttaranchal Sahayak Lekha Adhikari Seva Niyamavali, 2003. It is further stated that with the coming into force of the said Niyamavali 2003, the earlier tentative seniority list dated 24.12.2001, which was prepared according to the Uttar Pradesh Sahayak Lekha Adhikari Seva Niyamavali, 1985, Uttar Pradesh Sahayak Lekha Adhikari Seva (Pratham Sansodhan), Niyamavali, 2000, becomes invalid.

Thus, the respondents have admitted that the tentative seniority list prepared by the respondents after coming into force of Rules of 2003, became invalid and since there is no tentative list, there cannot be any final seniority list. In para 10 of the counter affidavit, the respondents have submitted that respondent no. 1 wrote a letter to the Secretary (Finance), Uttaranchal on 05.07.2004 to settle the representation/ objection of the petitioners and in reply to the said letter, the Secretary issued directions vide letter No. 239/ Vitta Anubhag-4/2004 stating therein that now with the enforcement of the new service Rules, the seniority list is not required for promotion and further directed that promotion would be made according to the said Niyamavli, 2003 and according to the directions and Rules.

In para 5 (a) and (b) of the supplementary counter affidavit it is stated by the respondents that there was no ban or stay on the promotion of Assistant Account Officers in the department by any Court of law or otherwise, hence, the promotions were made by the department strictly according to the Rules 5, 6, 7 and 8 of the Uttaranchal Sahayak Lekha Adhikari Seva Niyamavali, 2003. It is further stated that as a matter of fact, no person junior to the petitioners was promoted other than the persons belonging to the reserved category. Para 5 (a) and (b) are reproduced hereunder:-

> "5. -------
>
> (a) That the contents of para no. 19 A of the writ petition are not admitted. In reply the contents of para no. 4, 7 and 8 of counter affidavit filed by respondent no. 1 are reiterated here. However, it is also pertinent to mention here that there was no ban or stay on the promotions of the Assistant Account Officers in the department by any Court of Law or otherwise hence, the promotions were made by the department strictly according to the Rules 5,6,7 and 8 of the '**Uttaranchal Sahayak Lekha Adhikari Seva Niyamawali, 2003'.**

(b) That the contents of para no. 19 B of the writ petition as stated are not correct, hence not admitted. As a matter of fact no persons junior to the petitioners were promoted other than the persons belonging to the reserve category. The averment made by the petitioners that persons junior to them were promoted without considering their seniority is totally wrong and baseless."

The averment made in the counter affidavit as well as in the supplementary counter affidavit are contradictory. Rule 5 of the Rules of Uttaranchal Sahayak Lekha Adhikari Seva Niyamavali, 2003 provides source of recruitment on the post of Assistant Account Officer, which is reproduced as under:-

"5 भर्ती का स्रोत

सेवा में पदो पर भर्ती निम्नलिखित स्रोतो से की जायेगी –

(एक) 90 प्रतिशत मौलिक रूप से नियुक्त नियमावली परिशिष्ट 'ख' में उल्लिखित ऐसे विभागीय लेखाकार / वरिष्ठ लेखा परीक्षक /वरिष्ठ सम्परीक्षक में से जिन्होने भर्ती वर्ष के प्रथम दिवस को कम से कम पॉच वर्षो की सेवा पूर्ण कर ली हो एवं मौलिक नियुक्ति के पद पर स्थाई हो, पदोन्नति द्वारा ।

(दो) 05 प्रतिशत निदेशक, कोषागार एवं वित्त सेवायें सह स्टेट इन्टरनल ऑडिटर में मौलिक रूप से नियुक्त लेखाकार सह वरिष्ठ डाटा इन्ट्री ऑपरेटर / वरिष्ठ सम्प्रेक्षक सह – डाटा प्रोसेसिंग (निदेशालय कोषागार एवं वित्त सेवायें अधिष्ठान) में से, जिन्होंने भर्ती वर्ष के प्रथम दिवस को कम से कम पॉच वर्ष की स्थाई सेवा लिपिक पद पर पूर्ण कर ली हो, अथवा लेखाकार सह वरिष्ठ डाटा इन्ट्री ऑपरेटर /वरिष्ठ सम्प्रेक्षक सह–डाटा प्रासेसिगं के पद पर स्थाई हो पदान्नति द्वारा।

(तीन) 05 प्रतिशत निदेशक, लेखा एवं हकदारी में मौलिक रूप से नियुक्त लेखाकार सह वरिष्ठ डाटा इन्ट्री ऑपरेटर / वरिष्ठ सम्प्रेक्षक सह– डाटा प्रोसेसिंग (निदेशालय कोषागार एवं वित्त सेवायें अधिष्ठान) में से, जिन्होंने भर्ती वर्ष के प्रथम दिवस को कम से कम पॉच वर्ष की स्थाई सेवा लिपिक पद पर पूर्ण कर ली हो, अथवा लेखाकार सह वरिष्ठ डाटा इन्ट्री ऑरेटर/ वरिष्ठ सम्प्रेक्षक सह–डाटा प्रासेसिंग के पद पर स्थाई हो, पदान्नति द्वारा।

परन्तु यदि किसी पोषक संवर्ग में पर्याप्त संख्या में उपयुक्त या पात्र अभ्यर्थी पदोन्नति के लिए उपलब्ध न हो तो उन पदो को, इस नियमावली में यथा विनिर्दिष्ट शेष पोषक संवर्गो से भरा जा सकता है।

According to the Rules, 90% posts are to be filled from amongst the departmental Lekhakar/ Varistha Lekha Parikshak/ Varistha Samparikshak, who have completed 5 years' service on the first date of the year in which the promotions are going to be made and 5% posts are to be filled by way of promotions made

amongst Lekhakar/ Sah Varishtha Data Entry Operator/ Varishtha Samprekshak Sah Data Processing working under Director of Treasury and Financial Services Establishment, and who has completed 5 years' service, provided he is confirmed on the aforesaid post.

Rule 8 provides the procedure for making promotion on the post of Assistant Account Officer. Rule 8(1) specifically provides that the promotion shall be made on the post of Assistant Account Officer in accordance with the seniority subject to rejection as unfit. Thus, according to the Rules of 2003 prior to making promotion, seniority is to be considered and without preparing seniority list, promotions cannot be made. As it is the admitted case of the respondents that the final seniority list, which was prepared in the year 2002 on the basis of tentative seniority list, has become invalid in view of the Rules of 2003, as such, there cannot be any final seniority list without any tentative seniority list.

Thus, it is clear case of the respondents that there is no seniority list of the Accountant/ Senior Auditor, in fact. The respondents have further stated that for making promotion under the Rules of 2003, seniority list is not required, which is absolutely incorrect. As Rule 8 of the Rules specifically stated about the seniority. On the one hand, the respondents have stated that the promotions have been made strictly in accordance with the Rules 5,6,7 and 8 of Rules of 2003 and on the other hand, it is very clear that they had not complied with the Rule 8 of the Rules.

Since the petitioners have not impleaded those persons, who have been provided promotions in contravention of the Rules and without preparing seniority list as admitted by the respondents,

this Court is helpless to quash the promotion order passed by respondents. It is very strange that the authority did not care to see the Rules prior to making promotions and completely ignore Rule 8(1) of the aforesaid Rules and in the counter affidavit, they have stated that they have made the promotions in accordance with the Rules 5, 6, 7 and 8 of Rules of 2003. The promotions have been made in contravention of Rules are proved itself from the respondents' counter affidavit, wherein they have stated that for making promotions, no seniority list is required and further have stated that the earlier seniority list, which was prepared has become invalid.

In these circumstances, the Court is helpless to grant positive relief to the petitioners as the Court cannot quash the promotion order in absence of those persons who have been provided promotion by the department *de hors* the Rules as they are not a party before the Court.

Learned counsel for the petitioner has further submitted that post of Assistant Account Officer are vacant and petitioner may also be provided promotion on the post of Assistant Account Officer. If the authority has committed wrong, the Court cannot direct the authority to repeat the wrong. However, considering the facts and circumstances, it is expected from the authority that they will prepare a seniority list and in case the petitioners come within the zone of consideration, the case of the petitioners for promotion on the post of Assistant Account Officer may be considered as per Rules and if some persons, who have been provided promotion *de hors* the Rules, in fact, were not come within the zone of consideration for promotion as per the seniority list now prepare by the authority, the respondents may take necessary steps in that

regard. Since the petitioners are likely to be retired within a short period, it is expected from the respondents that they will complete the whole exercise within a period of six months from the date of production of a certified copy of this order.

With this direction, the writ petition is finally disposed of. All the pending applications stand disposed of. No order as of costs.

(M.M. Ghildiyal, J.)

22.09.2007
VKS